

AMENDED IN SENATE APRIL 5, 2010

SENATE BILL

No. 882

Introduced by Senator Corbett

January 14, 2010

An act to amend Sections 22950.5, 22955, 22962, and 22971 of the Business and Professions Code, and to add Section 111247 to the Health and Safety Code *add Sections 16005 and 16106 to the Business and Professions Code*, relating to tobacco, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 882, as amended, Corbett. Tobacco: ~~nicotine delivery devices; electronic cigarettes.~~

Existing law, the ~~Stop Tobacco Access to Kids Enforcement Act (STAKE Act)~~, establishes various requirements for retailers relating to tobacco sales to minors. ~~A violation of this act is a crime.~~

~~This bill would authorize action to halt the sale, distribution, or offering for sale of electronic cigarettes that have not been approved or cleared by the federal Food and Drug Administration. By changing the definition of an existing crime, this bill would impose a state-mandated local program.~~

~~The Sherman Food, Drug, and Cosmetic Law requires the State Department of Public Health to regulate the manufacture, sale, labeling, and advertising activities related to food, drugs, devices, and cosmetics in conformity with the Federal Food, Drug, and Cosmetic Act. A violation of these provisions is a crime.~~

~~This bill would deem any article that can provide inhaled doses of nicotine by delivering a vaporized solution a drug under these~~

~~provisions. By expanding the definition of an existing crime, this bill would impose a state-mandated local program.~~

Existing law authorizes cities and counties to issue business licenses, set licensing fees, and collect licensing fees. Existing law requires cities and counties to revoke the license of a business that engages in human cloning, as specified.

This bill would require cities and counties to revoke the license of a business that, on 2 or more occasions, provides or offers to provide electronic cigarettes to a person under 18 years of age.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. (a) The Legislature hereby finds and declares
- 2 all of the following:
- 3 (1) Electronic cigarettes are currently unregulated by the United
- 4 States Food and Drug Administration (FDA) and are available
- 5 for purchase in this state.
- 6 (2) Initial FDA studies found that electronic cigarettes contain
- 7 known carcinogens and misrepresent nicotine content on their
- 8 labels. As a result, the FDA has warned the public about the
- 9 potential health risks of using electronic cigarettes.
- 10 (3) Electronic cigarettes offered for sale in this state are
- 11 produced overseas and not covered by state and federal quality
- 12 control protections.
- 13 (4) Since electronic cigarettes are not regulated at the federal,
- 14 state, or local level, they can be legally sold to minors.
- 15 (5) County tobacco control programs have reported the
- 16 attempted sale of electronic cigarettes to minors at shopping malls.
- 17 Throughout the state, retailers have established shopping mall
- 18 kiosks near food courts and stores frequented by adolescents. At

1 *these kiosks, retailers target teens with pitches for electronic*
2 *cigarettes with flavored cartridges.*

3 *(6) A 2008 report prepared for the State Department of Public*
4 *Health found, with regard to the California Tobacco Control*
5 *Program, that law enforcement agencies continue to rank policies*
6 *and procedures, such as suspension or revocation of business*
7 *licenses and civil and criminal penalties for owners and clerks*
8 *who sell tobacco to minors, as effective strategies to reduce youth*
9 *access to tobacco.*

10 *(b) The Legislature finds and declares that due to important*
11 *health, safety, and welfare concerns that affect the entire state,*
12 *regardless of location, regulating the sale to and use by minors*
13 *of electronic cigarettes is a statewide concern, and not a municipal*
14 *affair.*

15 *SEC. 2. Section 16005 is added to the Business and Professions*
16 *Code, to read:*

17 *16005. (a) Any license issued to a business pursuant to this*
18 *chapter shall be revoked upon notification by a law enforcement*
19 *agency that a person who owns or is employed by the business*
20 *has, on two or more occasions, sold, furnished, administered,*
21 *distributed, given away, or offered to sell, furnish, administer,*
22 *distribute, or give away an electronic cigarette, to a person under*
23 *18 years of age.*

24 *(b) As used in this section, "electronic cigarette" means any*
25 *device that can provide inhaled doses of nicotine by delivering a*
26 *vaporized solution.*

27 *(c) This section applies to general law and charter cities.*

28 *SEC. 3. Section 16106 is added to the Business and Professions*
29 *Code, to read:*

30 *16106. (a) Any license issued to a business pursuant to this*
31 *chapter shall be revoked upon notification by a law enforcement*
32 *agency that a person who owns or is employed by the business*
33 *has, on two or more occasions, sold, furnished, administered,*
34 *distributed, given away, or offered to sell, furnish, administer,*
35 *distribute, or give away an electronic cigarette, to a person under*
36 *18 years of age.*

37 *(b) As used in this section, "electronic cigarette" means any*
38 *device that can provide inhaled doses of nicotine by delivering a*
39 *vaporized solution.*

40 *(c) This section applies to general law and charter counties.*

1 *SEC. 4. No reimbursement is required by this act pursuant to*
2 *Section 6 of Article XIII B of the California Constitution because*
3 *a local agency or school district has the authority to levy service*
4 *charges, fees, or assessments sufficient to pay for the program or*
5 *level of service mandated by this act, within the meaning of Section*
6 *17556 of the Government Code.*

7 ~~SECTION 1. Section 22950.5 of the Business and Professions~~
8 ~~Code is amended to read:~~

9 ~~22950.5. For purposes of this division, the following terms~~
10 ~~have the following meanings:~~

11 ~~(a) "Department" means the State Department of Public Health.~~

12 ~~(b) "Enforcing agency" means the State Department of Public~~
13 ~~Health, another state agency, including, but not limited to, the~~
14 ~~office of the Attorney General, or a local law enforcement agency;~~
15 ~~including, but not limited to, a city attorney, district attorney, or~~
16 ~~county counsel.~~

17 ~~(c) "Tobacco product" means a product containing tobacco leaf,~~
18 ~~including, but not limited to, cigarettes, cigars, pipe tobacco, snuff,~~
19 ~~chewing tobacco, dipping tobacco, bidis, or other preparation of~~
20 ~~tobacco, or a tobacco substitute.~~

21 ~~(d) "Tobacco substitute" means an article that can provide~~
22 ~~inhaled doses of nicotine by delivering a vaporized solution,~~
23 ~~including, but not limited to, an electronic cigarette.~~

24 ~~SEC. 2. Section 22955 of the Business and Professions Code~~
25 ~~is amended to read:~~

26 ~~22955. Agents of the state department, while conducting~~
27 ~~enforcement activities pursuant to this division, are peace officers~~
28 ~~and are subject to all of the powers and immunities granted to Food~~
29 ~~and Drug Section inspectors pursuant to Section 106500 of the~~
30 ~~Health and Safety Code in the same manner as are any Food and~~
31 ~~Drug Section inspectors of the state department. These agents may~~
32 ~~take enforcement action to halt the sale, distribution, or offering~~
33 ~~for sale to minors of tobacco substitutes that have not been~~
34 ~~approved or cleared by the federal Food and Drug Administration.~~

35 ~~SEC. 3. Section 22962 of the Business and Professions Code~~
36 ~~is amended to read:~~

37 ~~22962. (a) For purposes of this section, the following terms~~
38 ~~have the following meanings:~~

39 ~~(1) "Self-service display" means the open display of tobacco~~
40 ~~products or tobacco paraphernalia in a manner that is accessible~~

1 to the general public without the assistance of the retailer or
2 employee of the retailer.

3 (2) ~~“Tobacco paraphernalia” means cigarette papers or wrappers;~~
4 ~~blunt wraps as defined in Section 308 of the Penal Code, pipes;~~
5 ~~holders of smoking materials of all types, cigarette rolling~~
6 ~~machines, or other instruments or things designed for the smoking~~
7 ~~or ingestion of tobacco products.~~

8 (3) ~~“Tobacco store” means a retail business that meets all of the~~
9 ~~following requirements:~~

10 (A) ~~Primarily sells tobacco products.~~

11 (B) ~~Generates more than 60 percent of its gross revenues~~
12 ~~annually from the sale of tobacco products and tobacco~~
13 ~~paraphernalia.~~

14 (C) ~~Does not permit any person under 18 years of age to be~~
15 ~~present or enter the premises at any time, unless accompanied by~~
16 ~~the person’s parent or legal guardian, as defined in Section 6903~~
17 ~~of the Family Code.~~

18 (D) ~~Does not sell alcoholic beverages or food for consumption~~
19 ~~on the premises.~~

20 (b) (1) (A) ~~Except as permitted in subdivision (b) of Section~~
21 ~~22960, it is unlawful for a person engaged in the retail sale of~~
22 ~~tobacco products to sell, offer for sale, or display for sale any~~
23 ~~tobacco product or tobacco paraphernalia by self-service display.~~

24 (B) ~~A person who violates this section is subject to those civil~~
25 ~~penalties specified in the schedule in subdivision (a) of Section~~
26 ~~22958.~~

27 (2) ~~It is unlawful for a person engaged in the retail sale of blunt~~
28 ~~wraps to place or maintain, or to cause to be placed or maintained,~~
29 ~~any blunt wraps advertising display within two feet of candy,~~
30 ~~snack, or nonalcoholic beverage displayed inside any store or~~
31 ~~business.~~

32 (3) ~~It is unlawful for any person or business to place or maintain,~~
33 ~~or cause to be placed or maintained, any blunt wrap advertising~~
34 ~~display that is less than four feet above the floor.~~

35 (e) ~~Subdivision (b) shall not apply to the display in a tobacco~~
36 ~~store of cigars, pipe tobacco, snuff, chewing tobacco, or dipping~~
37 ~~tobacco, provided that in the case of cigars they are generally not~~
38 ~~sold or offered for sale in a sealed package of the manufacturer or~~
39 ~~importer containing less than six cigars. In any enforcement action~~
40 ~~brought pursuant to this division, the retail business that displays~~

1 any of the items described in this subdivision in a self-service
2 display shall have the burden of proving that it qualifies for the
3 exemption established in this subdivision.

4 (d) ~~The Attorney General, a city attorney, a county counsel, or~~
5 ~~a district attorney may bring a civil action to enforce this section.~~

6 (e) ~~This section shall not preempt or otherwise prohibit the~~
7 ~~adoption of a local standard that imposes greater restrictions on~~
8 ~~the access to tobacco products than the restrictions imposed by~~
9 ~~this section. To the extent that there is an inconsistency between~~
10 ~~this section and a local standard that imposes greater restrictions~~
11 ~~on the access to tobacco products, the greater restriction on the~~
12 ~~access to tobacco products in the local standard shall prevail.~~

13 ~~SEC. 4. Section 22971 of the Business and Professions Code~~
14 ~~is amended to read:~~

15 ~~22971. For purposes of this division, the following terms shall~~
16 ~~have the following meanings:~~

17 (a) ~~“Board” means the State Board of Equalization.~~

18 (b) ~~“Importer” means an importer as defined in Section 30019~~
19 ~~of the Revenue and Taxation Code.~~

20 (c) ~~“Distributor” means a distributor as defined in Section 30011~~
21 ~~of the Revenue and Taxation Code.~~

22 (d) ~~“Manufacturer” means a manufacturer of cigarettes or~~
23 ~~tobacco products sold in this state.~~

24 (e) ~~“Retailer” means a person who engages in this state in the~~
25 ~~sale of cigarettes or tobacco products directly to the public from~~
26 ~~a retail location. Retailer includes a person who operates vending~~
27 ~~machines from which cigarettes or tobacco products are sold in~~
28 ~~this state.~~

29 (f) ~~“Retail location” means both of the following:~~

30 (1) ~~Any building from which cigarettes or tobacco products are~~
31 ~~sold at retail.~~

32 (2) ~~A vending machine.~~

33 (g) ~~“Wholesaler” means a wholesaler as defined in Section~~
34 ~~30016 of the Revenue and Taxation Code.~~

35 (h) ~~“Cigarette” means a cigarette as defined in Section 30003~~
36 ~~of the Revenue and Taxation Code.~~

37 (i) ~~“License” means a license issued by the board pursuant to~~
38 ~~this division.~~

39 (j) ~~“Licensee” means any person holding a license issued by~~
40 ~~the board pursuant to this division.~~

1 ~~(k) “Sale” or “sold” means a sale as defined in Section 30006~~
2 ~~of the Revenue and Taxation Code.~~

3 ~~(l) “Tobacco products” means tobacco products as defined in~~
4 ~~subdivision (b) of Section 30121 and subdivision (b) of Section~~
5 ~~30131.1 of the Revenue and Taxation Code.~~

6 ~~(m) “Tobacco substitute” means an article that can provide~~
7 ~~inhaled doses of nicotine by delivering a vaporized solution,~~
8 ~~including, but not limited to, an electronic cigarette.~~

9 ~~(n) “Unstamped package of cigarettes” means a package of~~
10 ~~cigarettes that does not bear a tax stamp as required under Part 13~~
11 ~~(commencing with Section 30001) of Division 2 of the Revenue~~
12 ~~and Taxation Code, including a package of cigarettes that bears a~~
13 ~~tax stamp of another state or taxing jurisdiction, a package of~~
14 ~~cigarettes that bears a counterfeit tax stamp, or a stamped or~~
15 ~~unstamped package of cigarettes that is marked “Not for sale in~~
16 ~~the United States.”~~

17 ~~(o) “Person” means a person as defined in Section 30010 of the~~
18 ~~Revenue and Taxation Code.~~

19 ~~(p) “Package of cigarettes” means a package as defined in~~
20 ~~Section 30015 of the Revenue and Taxation Code.~~

21 ~~(q) (1) “Control” or “controlling” means possession, direct or~~
22 ~~indirect, of the power:~~

23 ~~(A) To vote 25 percent or more of any class of the voting~~
24 ~~securities issued by a person.~~

25 ~~(B) To direct or cause the direction of the management and~~
26 ~~policies of a person, whether through the ownership of voting~~
27 ~~securities, by contract (other than a commercial contract for goods~~
28 ~~or nonmanagement services), or otherwise provided; however, no~~
29 ~~individual shall be deemed to control a person solely on account~~
30 ~~of being a director, officer, or employee of such person.~~

31 ~~(2) For purposes of subparagraph (B) of paragraph (1), a person~~
32 ~~who, directly or indirectly, owns, controls, holds, with the power~~
33 ~~to vote, or holds proxies representing 10 percent or more of the~~
34 ~~then outstanding voting securities issued by another person, is~~
35 ~~presumed to control that other person.~~

36 ~~(3) For purposes of this division, the board may determine~~
37 ~~whether a person in fact controls another person.~~

38 ~~(r) “Law enforcement agency” means a sheriff, a police~~
39 ~~department, or a city, county, or city and county agency or~~
40 ~~department designated by the governing body of that agency to~~

1 ~~enforce this chapter or to enforce local smoking and tobacco~~
2 ~~ordinances and regulations.~~

3 ~~(s) “Brand family” has the same meaning as that term is defined~~
4 ~~in paragraph (2) of subdivision (a) of Section 30165.1 of the~~
5 ~~Revenue and Taxation Code.~~

6 ~~(t) The amendments made to this section by the act adding this~~
7 ~~subdivision shall become operative May 1, 2007.~~

8 ~~SEC. 5. Section 111247 is added to the Health and Safety Code,~~
9 ~~to read:~~

10 ~~111247. Any article that can provide inhaled doses of nicotine~~
11 ~~by delivering a vaporized solution, including, but not limited to,~~
12 ~~an electronic cigarette, shall be deemed to be a drug as defined in~~
13 ~~Section 109925. This section shall not be construed as bearing on~~
14 ~~or being relevant to the question of whether any other product is~~
15 ~~a drug as defined in Section 109925 or a device as defined in~~
16 ~~Section 109920.~~

17 ~~SEC. 6. No reimbursement is required by this act pursuant to~~
18 ~~Section 6 of Article XIII B of the California Constitution because~~
19 ~~the only costs that may be incurred by a local agency or school~~
20 ~~district will be incurred because this act creates a new crime or~~
21 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
22 ~~for a crime or infraction, within the meaning of Section 17556 of~~
23 ~~the Government Code, or changes the definition of a crime within~~
24 ~~the meaning of Section 6 of Article XIII B of the California~~
25 ~~Constitution.~~

26 ~~SEC. 7.~~

27 ~~SEC. 5. This act is an urgency statute necessary for the~~
28 ~~immediate preservation of the public peace, health, or safety within~~
29 ~~the meaning of Article IV of the Constitution and shall go into~~
30 ~~immediate effect. The facts constituting the necessity are:~~

31 ~~In order to protect the health of minors from a product with~~
32 ~~contents that have not been comprehensively studied and are~~
33 ~~unregulated on the market, it is necessary for this bill to go into~~
34 ~~immediate effect.~~